



DEPARTMENT OF THE NAVY
OFFICE OF THE GENERAL COUNSEL

COUNSEL FOR THE
PORT HUENEME DIVISION
Naval Surface Warfare Center
Port Hueneme, California 93043-4307

5720
Ser 00L-MDR/1648
15 Sept 2016

Anne Rivas
Bright Lights USA, Inc.
145 Shreve Avenue
Barrington, New Jersey 08007

Via Email: anner@brightlightsusa.com

Subj: Privacy Act (PA) / Freedom of Information Act (FOIA)
Request(s)

Dear Ms. Rivas:

This letter responds to Bright Lights USA, Inc.'s (BLUI) below referenced Freedom of Information Act (FOIA) requests. BLUI has requested copies of the following materials (DoD technical data):

FOIA Number	NSN	Part#
DON-NAVY-2013-000200F	5365-01-357-7380	5190349
DON-NAVY-2013-000211T	3020-01-378-3430	52D370
	2540-01-466-7221	7102598
	4920-21-912-9516	PWC32000
		PWC32396
		PWC34478
		PWC50716
		PWC50721
		PWC71427
DON-NAVY-2013-000199T		5543839
		6166847
		6166850
DON-NAVY-2013-000198T	5330-01-593-1495	2530999
	5315-01-351-8851	4563091
	4730-01-135-7701	4675281
		5186593
		5186677

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DON-NAVY-2013-000210T	5340-01-594-4326	2528885
	5365-01-594-7158	2530771
		2533404
	9905-01-372-2983	5188460
	5935-01-392-5514	6122783
DON-NAVY-2013-000207T		5186701
	5985-01-177-8735	5187227
	4010-01-356-7661	5187989
		5188075
		5189878
DON-NAVY-2013-000778T	4710-01-414-2295	5830270
	9905-01-606-9242	6032637
	5340-01-606-9245	6032638
	5340-01-606-9246	6032639
		6181509
DON-NAVY-2013-000206T	5342-00-690-3994	815-1197095
	6150-01-211-3678	5187462
		5190692
	5315-01-207-4808	5519289
	5330-01-229-3530	5520075
	1015-01-483-3733	6929707
DON-NAVY-2013-000201T		5187811
	5330-00-069-1557	2123452
	5315-01-382-4864	2321420
	5950-00-441-5126	2453749
	5310-00-467-9667	2580200

This response is made on behalf of the Commanding Officer,
Naval Surface Warfare Center, Port Hueneme Division.

I am denying BLUI's request for these documents pursuant to
FOIA exemption (b)(3). Exemption 3 requires the withholding of
information prohibited from disclosure by another statute
provided that the statute "(A) requires that the matters be
withheld from the public in such a manner as to leave no
discretion on the issue, or (B) establishes particular criteria

for withholding or refers to particular types of matters to be withheld." 5.U.S.C. 552(b)(3).

10 U.S.C. 130 and the Department of Defense (DoD) implementing directive, DoD 5230.25, prohibits disclosure of technical data with military or space application in the possession of, or under the control of, the Department of Defense, if such data may not be exported lawfully outside of the United States without proper approval, authorization, or the United States without proper approval, authorization, or license under the Arms Export Control Act. 10 U.S.C. 130 is an exemption 3 statute.

The information BLUI has requested is technical data that (1) would require approval, authorization, or license for export under the Arms Export Control Act (22 U.S.C. 2751, et seq.) and (2) would disclose critical technology with military or space application.

DoD Directive 5230.25 requires that U.S. contractors be certified with the Defense Logistics Agency (DLA) Joint Certification Program to obtain technical documents containing critical technology from DoD sources. As the need arises for a company to obtain unclassified technical data for a proposal or contract, the company shall complete the appropriate Data Request and submit it to the government agency which owns or controls the data required. As a minimum, the Data Request should include the following:

- A copy of the companies DD 2345;
- Detailed information on the data required;
- A statement of the intended data use.

As required BLUI has submitted its DD 2345; detailed information on the data required; and a statement of intended data use, but has not provided information related to which proposal or contract the technical data is needed. (See BLUI's above referenced FOIA requests)

BLUI's DD Form 2345 dated 18 April 2016 with expiration date 15 May 2021 which was submitted with its requests provides the following as the description of relevant business activity:

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"MANUFACTURER AND DISTRIBUTOR OF MECHANICAL,
LECTROMECHANICAL AND MACHINED PARTS TO DEPARTMENT OF
DEFENSE ACTIVITIES AND OTHER U.S. GOVERNMENT CONTRACTORS."

BLUI's description of the intended use provided is as
follows: "JOBS & QUOTE."

DoD Directive 5230.24 requires all DoD Components that
generate or are responsible for technical documents determine
their distribution availability and mark them appropriately
before primary distribution. Managers of technical programs are
required to assign appropriate distribution statements to
technical documents generated within their programs to
control the secondary distribution of those documents.
Therefore, technical data with military or space application
also must be marked with a prescribed export warning
statement, in addition to other markings authorizing or
restricting secondary distribution.

The technical data subject to BLUI's requests is marked
with a distribution statement, i.e., "DISTRIBUTION D.
Distribution authorized to Department of Defense and U.S. DoD
contractors only..", to control the secondary distribution of the
same and also with the prescribed export warning statement.
Therefore, additional information is required in order to
approve the release of the requested technical data to BLUI,
e.g., a specifically identified proposal or contract.

Accordingly, since this information is prohibited from
public disclosure under 10 U.S.C. 130, I am denying BLUI's FOIA
requests under exemption (b)(3).

You may either submit a new request with the additional
information described in this letter, or appeal the denial of
your request. Should you choose to submit a new request, please
submit it to: Marvin D. Rampey, Associate Counsel, NSWC PHD,
Office of Counsel, 4363 Missile Way, Bldg. 445-Rm. 28, Port
Hueneme, CA 93043-5007.

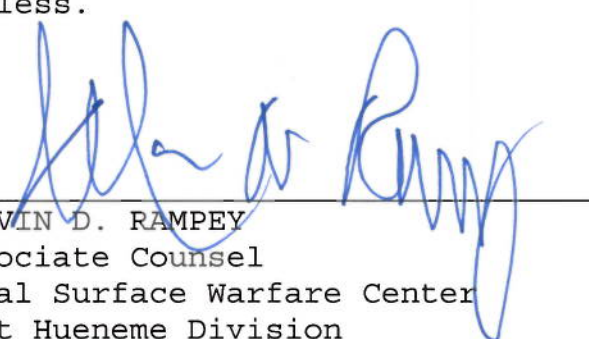
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Should you choose to pursue an appeal, please submit it in writing to Department of the Navy, Office of General Counsel, ATTN: FOIA/PA Appeals Office, 1000 Navy Pentagon, Room 5A532, Washington, D.C. 20350-1000. Your appeal must be postmarked within 60 calendar days from the date on this letter to be considered. A statement as to why your appeal should be granted should be included and an enclosed copy of this letter should be attached along with your original request. Both the appeal letter and the envelope should bear the notation, "**FREEDOM OF INFORMATION ACT APPEAL.**"

In accordance with SECNAVINST 5720.42F all applicable fees involved in the processing of your request are waived because the assessable costs were \$15 or less.



MARVIN D. RAMPEY
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Naval Surface Warfare Center
Port Hueneme Division